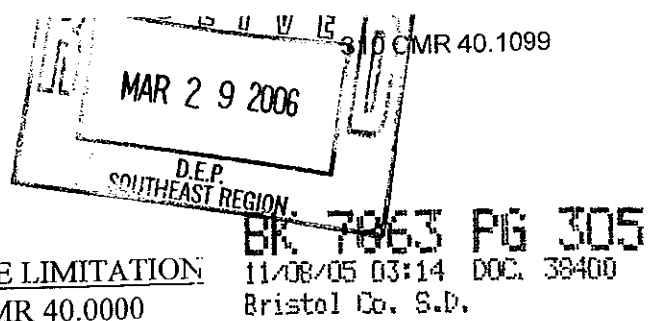


Form 1075



**NOTICE OF ACTIVITY AND USE LIMITATION**  
M.G.L. c. 21E, § 6 and 310 CMR 40.0000

Disposal Site Name: **545 Orchard Street, New Bedford, MA**  
DEP Release Tracking No.(s): **4-00688**

This Notice of Activity and Use Limitation ("Notice") is made as of this 7th day of July, 2005, by **Clarks Cove Development Company, LLC, 651 Orchard Street, Suite 200, New Bedford, MA 02744**, together with his/her/its/their successors and assigns (collectively "Owner").

**WITNESSETH:**

WHEREAS, **Clarks Cove Development Company, LLC**, is the owner in fee simple of that certain parcel of vacant land located in **New Bedford, Bristol (South) County, Massachusetts**, pursuant to a deed recorded with the **Bristol (South) County Registry of Deeds** in Book 7223, Page 263;

WHEREAS, said parcel(s) of land, which is more particularly bounded and described in Exhibit A, attached hereto and made a part hereof ("Property") is subject to this Notice of Activity and Use Limitation. The Property is shown on [a plan recorded in the **Bristol County Registry of Deeds** in Plan Book 19, Plan 2;

WHEREAS, the Property comprises all of a disposal site as the result of a release of oil and/or hazardous material. Exhibit B is a sketch plan showing the relationship of the Property subject to this Notice of Activity and Use Limitation to the boundaries of said disposal site existing within the limits of the Property and to the extent such boundaries have been established. Exhibit B is attached hereto and made a part hereof; and

WHEREAS, one or more response actions have been selected for the Disposal Site in accordance with M.G.L. c. 21E ("Chapter 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000 ("MCP"). Said response actions are based upon (a) the restriction of human access to and contact with oil and/or hazardous material in soil and/or (b) the restriction of certain activities occurring in, on, through, over or under the Property. The basis for such restrictions is set forth in an Activity and Use Limitation Opinion ("AUL Opinion"), dated 8/25/2005, (which is attached hereto as Exhibit C and made a part hereof);

NOW, THEREFORE, notice is hereby given that the activity and use limitations set forth in said AUL Opinion are as follows:

1. Activities and Uses Consistent with the AUL Opinion. The AUL Opinion provides that a condition of No Significant Risk to health, safety, public welfare or the environment exists for any foreseeable period of time (pursuant to 310 CMR 40.0000) so long as any of the following activities and uses occur on the Property:

The language in these forms are part of promulgated regulations and cannot be modified in any way unless so noted (within brackets) in the form itself.

PLEASE RETURN TO:

LANDAMERICA  
150 FEDERAL STREET, SUITE 200  
BOSTON, MA 02110  
ATTN: APW FILE NO. 7833

(i) Maintenance of the property as an unpaved, vacant lot. The permitted use of the Property as an unpaved vacant lot is contingent upon the Property being enclosed with a secure fence or wall which will prevent access to the Property by all persons with the exception of the Owner and his/her/its agents for inspection or maintenance activities at the Property;

(ii) Construction activities and underground utility repair, including soil excavation and regarding activities, provided a Soils Management Plan and Health and Safety Plan is implemented prior to the commencement of such activities;

(iii) Commercial and industrial activities and uses provided that the Property remains entirely covered with any of the following structures or materials or any combination of the following structures or materials; (1) a building foundation with a concrete floor, (2) an impervious surface such as concrete or asphalt pavement, (3) greater than three (3) feet of clean fill placed upon the ground surface at the existing ground elevation with landscaped vegetation

(iv) Such other activities or uses which, in the Opinion of an LSP, shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this Paragraph; and

(v) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with the AUL.

2. Activities and Uses Inconsistent with the AUL Opinion. Activities and uses which are inconsistent with the objectives of this Notice of Activity and Use Limitation, and which, if implemented at the [Property] [Portion of the Property], may result in a significant risk of harm to health, safety, public welfare or the environment or in a substantial hazard, are as follows:

(i) Residential, agricultural, outdoor and indoor recreational or institutional activities and uses (institutional activities and uses inconsistent with the AUL Opinion are specifically associated with daycare centers, schools, orphanages and educational facilities);

(ii) Commercial/industrial use in the absence of barriers identified in 1(iii); and

(iii) Excavation of and exposure to Property soils with the exception of future construction/site development activities and short duration excavation for the purposes of underground utility repairs or installation.

3. Obligations and Conditions Set Forth in the AUL Opinion. If applicable, obligations and/or conditions to be undertaken and/or maintained at the Property to maintain a condition of No Significant Risk as set forth in the AUL Opinion shall include the following:

(i) As an unpaved, vacant lot, obligations and conditions set forth in the AUL Opinion to

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The language in these forms are part of promulgated regulations and cannot be modified in any way unless so noted (within brackets) in the form itself.

be undertaken and/or maintained at the Property include indefinite maintenance of a secure fence or wall which will prevent access to the Property by all persons with the exception of the Owner and his/her/its agents for inspection or maintenance activities at the property;

(ii) During any construction/site development activities, obligations and conditions set forth in the AUL Opinion to be undertaken and/or maintained at the Property include: maintenance of a secure fence or wall which will prevent access to Property soils by all persons with the exception of the Owner and his/her/its agents and construction/site development workers; the implementation of a Soil Management Plan under the direction of a Licensed Site Professional; and implementation of a Health and Safety Plan prepared by a certified industrial hygienist.; and

(iii) During any commercial and industrial activities and uses at the Property, the Property must remain entirely covered with the structures or materials identified in (iii) indefinitely except to conduct construction/site development activities or short term utility repairs..

4. Proposed Changes in Activities and Uses. Any proposed changes in activities and uses at the Property which may result in higher levels of exposure to oil and/or hazardous material than currently exist shall be evaluated by an LSP who shall render an Opinion, in accordance with 310 CMR 40.1080 *et seq.*, as to whether the proposed changes will present a significant risk of harm to health, safety, public welfare or the environment. Any and all requirements set forth in the Opinion to meet the objective of this Notice shall be satisfied before any such activity or use is commenced.

5. Violation of a Response Action Outcome. The activities, uses and/or exposures upon which this Notice is based shall not change at any time to cause a significant risk of harm to health, safety, public welfare, or the environment or to create substantial hazards due to exposure to oil and/or hazardous material without the prior evaluation by an LSP in accordance with 310 CMR 40.1080 *et seq.*, and without additional response actions, if necessary, to achieve or maintain a condition of No Significant Risk or to eliminate substantial hazards.

If the activities, uses, and/or exposures upon which this Notice is based change without the prior evaluation and additional response actions determined to be necessary by an LSP in accordance with 310 CMR 40.1080 *et seq.*, the owner or operator of the Property subject to this Notice at the time that the activities, uses and/or exposures change, shall comply with the requirements set forth in 310 CMR 40.0020.

6. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer. This Notice shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property or a portion thereof is conveyed.

Owner hereby authorizes and consents to the filing and recordation and or registration of this Notice, said Notice to become effective when executed under seal by the undersigned LSP, and recorded and/or registered with the appropriate Registry(ies) of Deeds and/or Land Registration Office(s).

WITNESS the execution hereof under seal this 7th day of July, 2005.

Clark's Cove Development Company, LLC

  
John E. Williams, Manager

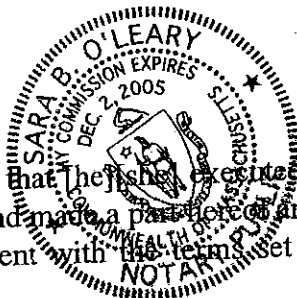
[COMMONWEALTH OF MASSACHUSETTS]  
[STATE OF \_\_\_\_\_]

\_\_\_\_ Bristol \_\_\_\_\_, ss

\_\_\_\_ July 7 \_\_\_\_\_, 2005

Then personally appeared the above-named John E. Williams, Manager and acknowledged the foregoing instrument to be the free act and deed of said Limited Liability Company before me,

*Sara B. O'Leary*  
Notary Public: Sara B. O'Leary  
My Commission Expires: 12-02-2005



The undersigned LSP hereby certifies that [he][she] executed the aforesaid Activity and Use Limitation Opinion attached hereto as Exhibit C and made a part hereof and that in [his][her] Opinion this Notice of Activity and Use Limitation is consistent with the terms set forth in said Activity and Use Limitation Opinion.

Date: \_\_\_\_\_

*Robert W. Nicoloro*  
[Name of LSP]  
[LSP SEAL]



[COMMONWEALTH OF MASSACHUSETTS]  
[STATE OF New Hampshire]

Rockingham County Sept 20, 2005

Then personally appeared the above named \_\_\_\_\_ and acknowledged the foregoing instrument to be [his][her] free act and deed before me,

*Sara B. O'Leary*  
Notary Public: Sara B. O'Leary  
My Commission Expires: 12-02-2005

Upon recording, return to:

Clarks Cove Development Company, LLC  
c/o John E. Williams, Manager  
651 Orchard Street, Suite 200  
New Bedford, MA 02744

BK 7863 PG 316

**EXHIBIT A**

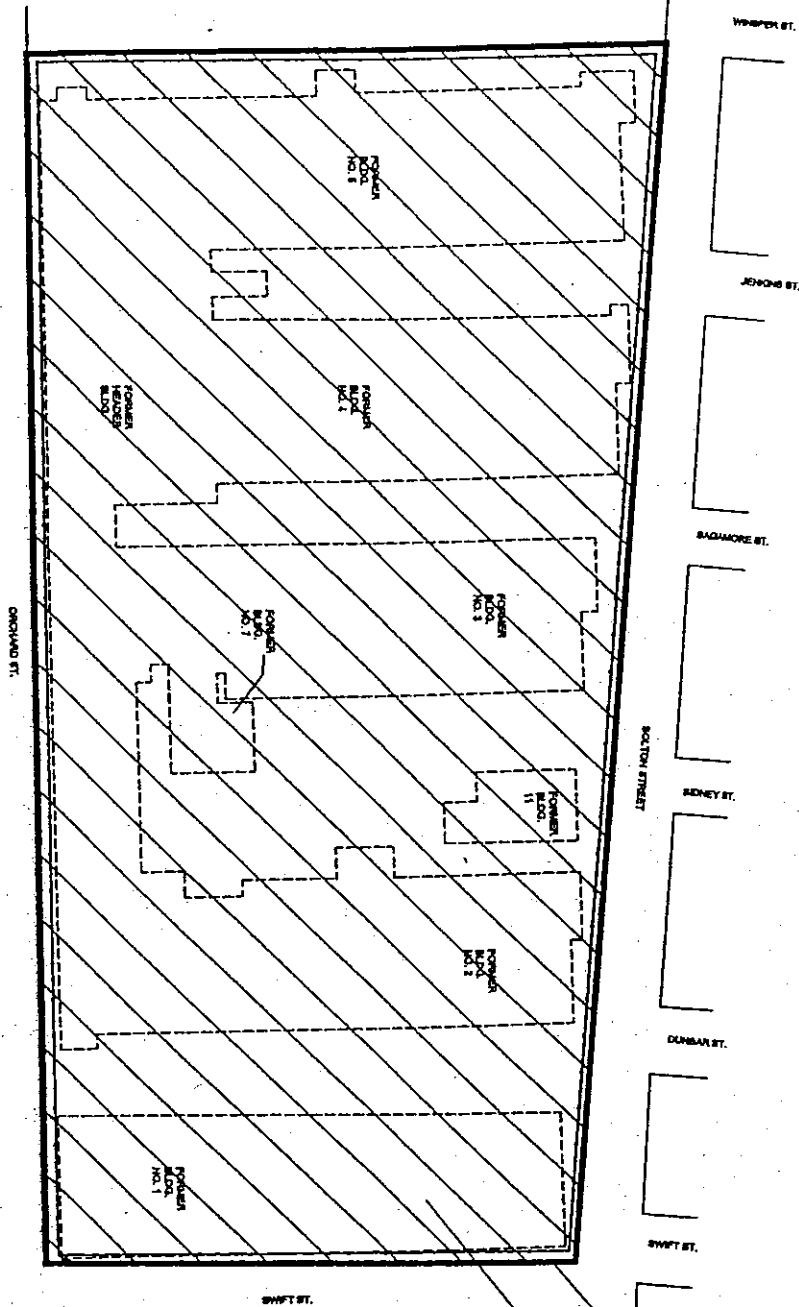
Legal Description of the Property

The following Metes & Bounds are to describe the Property located at 545 Orchard Street

Beginning at the northwesterly corner thereof at the intersection of Bolton Road and Swift Street; thence running easterly by said Swift Street four hundred forty-five (445) feet, more or less, to Orchard Street; thence running southerly by said Orchard Street nine hundred eighty and eighty one-hundredths (980.80) feet to property now or formerly of the Gosnold Mills; thence running westerly at an interior angle of eighty-nine degrees fifty-one minutes ( $89^{\circ} 51'$ ) by said Gosnold Mills land in part through the center of a brick wall five hundred forty-one and eighty-three one-hundredths (541.83) feet, more or less, to said Bolton Road; and thence running northerly by said Bolton Road about nine hundred eighty-five (985) feet to the point of beginning.

**EXHIBIT B**





BOUNDARY OF  
DISPOSAL SITE

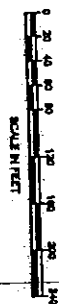
RESTRICTED AREA  
(HATCHED)

LEGEND:

CHAIN LINK FENCE

OUTLINE FOOTPRINT OF FORMER BUILDING  
(REMOVED)

BASED ON PLAN BY FIELD ASSOCIATES, INC.



SKETCH PLAN  
646 ORCHARD STREET  
NEW BEDFORD, MASSACHUSETTS

H14

Working Document - Not for Distribution

**EXHIBIT C**

EXHIBIT CACTIVITY AND USE LIMITATION OPINION

In accordance with the requirements of 310 CMR 40.0174, this Activity and Use Limitation Opinion has been prepared for a parcel of land owned by Clarks Cove Development, LLC, and located at 545 Orchard Street, New Bedford, Bristol County, Massachusetts. The Site is approximately 11 acres with no structures and is situated approximately 1,500 feet northwest of Clarks Cove within a high density, mixed urban residential/commercial/industrial zone. The property is graded as an open field lot and is completely fenced.

Site History

The Site is a former manufacturing location first developed as a textile mill in the early 1890's by American Cotton Fabric Corporation. The Goodyear Tire & Rubber Company (Goodyear) purchased the mill in the 1920s for the manufacture of rubber tires and specialty rubber products. The property is located in New Bedford, Massachusetts and is bordered to the north by Swift Street, to the east by Orchard Street, to the west by Bolton Street, and to the south by Howland Place Retail Mall complex. Goodyear conducted facility decommissioning activities following the closure of the plant and removal of operations and equipment. Decommissioning activities included the removal by demolition of all structures on the property and preparation of the property for sale and future redevelopment. During the course of decommissioning activities, it was discovered that lubricating oils from machinery had been released to soil and groundwater at the Site. Short Term measures were conducted at the site and Phase II Activities were initiated. The assessment activities completed at the Site indicated that lead, petroleum hydrocarbons, polycyclic aromatic hydrocarbons and volatile organic compound residuals were present in the soil and groundwater at the Site. Furthermore, based on the results of additional Phase II activities conducted in 1999, oil and/or hazardous materials were determined not to be migrating from the Site. Furthermore, it was concluded that no uncontrolled sources remain at the Site. Concentrations of OHM on-site were determined to be below S-2 soil standards and below GW-2 groundwater standards and in certain location on-site below GW-1 standards.

Reason for Activity and Use Limitation

An AUL is required to achieve and maintain a condition of No Significant Risk on the subject Property. In addition, the implementation of the AUL is being used to provide notice of the existence of contamination to future holders of an interest(s) in the subject Property, and to place additional conditions on Site uses.

**Permitted Activities and Uses Set Forth in the AUL Opinion**

- (i) Maintenance of the property as an unpaved, vacant lot. The permitted use of the Property as an unpaved vacant lot is contingent upon the Property being enclosed with a secure fence or wall which will prevent access to the Property by all persons with the exception of the Owner and his/her/its agents for inspection or maintenance activities at the Property.
- (ii) Construction activities and underground utility repair, including soil excavation and regarding activities, provided a Soils Management Plan and Health and Safety Plan is implemented prior to the commencement of such activities;
- (iii) Commercial and industrial activities and uses provided that the Property remains entirely covered with any of the following structures or materials or any combination of the following structures or materials; (1) a building foundation with a concrete floor, (2) an impervious surface such as concrete or asphalt pavement, (3) greater than three (3) feet of clean fill placed upon the ground surface at the existing ground elevation with landscaped vegetation; and
- (iv) Such other activities or uses which, in the Opinion of an LSP, shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this Paragraph.

**Activities and Uses Inconsistent with the AUL Opinion**

- (i) Residential, agricultural, outdoor and indoor recreational or institutional activities and uses (institutional activities and uses inconsistent with the AUL Opinion are specifically associated with daycare centers, schools, orphanages and educational facilities);
- (ii) Commercial/industrial use in the absence of barriers identified above; and
- (iii) Excavation of and exposure to Property soils with the exception of future construction/site development activities and short duration excavation for the purposes of underground utility repairs or installation.

LSP Signature:



LSP Seal

Date:

8-25-2005

License Number:

4290



[illegible]

DETAIL OF UNIT B-3  
Scale 1:20

Commonwealth of Massachusetts

**Registry of Deeds:**

Now Bedford, Dec 22 1923

At 10 Hour 40 Min. 9-M

Received and Recorded in

Attest *James H. McPherson*  
Register.

**Register.**

UNIT A-1

UNIT B-2

STREET

UNIT A-2

CATHERINE